

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RUSSELL FARIA,)	
Plaintiff,)	
)	No. 4:16CV001176 JAR
vs.)	
)	
RYAN MCCARRICK, et al,)	
Defendants.)	

WITNESS PAMELA HUPP'S MOTION TO QUASH SUBPOENA

COMES NOW Pamela Hupp, by and through counsel and pursuant to Fed. R. Civ. P 45 moves this Court for an Order quashing Plaintiff's Subpoena to take Deposition. In support of this Motion, Pamela states as follows:

1. Pamela is currently confined in the St. Charles County Jail on charges of murder in the first degree wherein the State of Missouri is seeking the death penalty in Cause 1611-CR4519-01. Trial is now set for September 11, 2018 and discovery is not yet complete. Undersigned counsel is Pamela's counsel of record.

2. On January 10, 2018, Pamela was served by Plaintiff with a subpoena for deposition to occur at the St. Charles County Jail on January 18, 2018 at 1:30 pm. Undersigned counsel obtained a copy of the subpoena on January 11, 2018.

3. Due to her pending criminal case, Pamela asserts that she maintains a right to remain silent under the Fifth Amendment to the United States Constitution. Pamela also reserves her right to counsel under the Sixth Amendment to the United States Constitution.

4. Pamela requests that this Court quash Plaintiff's subpoena as Plaintiff's subpoena places upon her an undue burden and impermissibly interferes with her right to due process, a fair trial, and effective assistance of counsel in her criminal case as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2, 10 and 18(a) of the Missouri Constitution.

5. Pamela is not a party to this litigation. Plaintiff can obtain no "adverse inference" advantage by Pamela's in-person assertion of her rights at deposition. Nevertheless, Plaintiff's counsel, Mr. Schock, has indicated that he intends to engage in extensive questioning of Pamela and require her to assert her rights to every question he desires to ask. This process would impermissibly infringe on Pamela's constitutional rights in Cause 1611-CR4519-01.

6. Furthermore, allowing Plaintiff, Mr. Faria, to be present for the deposition would constitute an obscene intimidation tactic and abuse of the deposition process. Pamela remains terrified of Mr. Faria whose jury conviction for the brutal, stabbing murder of his wife is the subject matter of this lawsuit.

7. Subjecting Pamela to extensive questioning in a small jail room with 6-13 male lawyers and Mr. Faria would constitute an extreme hardship and cause undue mental duress that could ultimately affect her criminal case.

8. This Court is able to find, based on the public record and counsel's representations, that Pamela has an absolute Fifth Amendment right to refrain from answering questions in the above styled civil cause. A deposition under these

circumstances would subject her to undue mental anguish and would impermissibly affect Pamela's defense of her pending case.

9. Undersigned counsel has been informed by this Court's chambers that the Court is due to start a trial next week and will be unavailable to hear this Motion to Quash on January 16 or 17, prior to the scheduled deposition.

10. Pamela requests this Court stay and hold in abeyance Plaintiff's subpoena until such time as this Court is able to hold a hearing in this matter. Staying and holding in abeyance the Plaintiff's subpoena will not prejudice the parties or delay the underlying lawsuit. The interests of justice are best served by Quashing Plaintiff's Subpoena or in the alternative holding it in abeyance until such time as a hearing on this Motion can occur.

WHEREFORE Pamela Hupp requests that this Court Quash Plaintiff's subpoena for deposition set on January 18, 2018 at 1:30 pm or in the alternative conduct a hearing and stay and hold in abeyance the Plaintiff's subpoena until such time as a hearing can be held, and for any additional relief that this Court deems just and proper.

Respectfully Submitted,

/s/ Kim C Freter
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ATTORNEY FOR PAMELA HUPP

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was delivered the 11th day of January, 2018 via the Court's electronic filing system to all parties listed as counsel on this case.

/s/ Kim C Freter